



December 8, 2020

National FOIA Office  
Office of General Counsel  
US Environmental Protection Agency  
1200 Pennsylvania Avenue, NW, Mail Code 2310A  
Washington, DC 20460  
[hq.foia@epa.gov](mailto:hq.foia@epa.gov)

Dear FOIA Officer:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, as amended, Public Employees for Environmental Responsibility ("PEER"), requests certain information and communications from the Environmental Protection Agency (EPA) **regarding the approval of the use of Phosphogypsum (PG) in government road construction projects**. The notice of this approval was published in the Federal Register on October 20, 2020, 85 Fed. Reg. 66,550. Hereinafter "PG Roads Rule."

### **Background**

The EPA's decision, the PG Roads Rule, which allows the use of radioactive backfill in public roads will have far reaching impacts to the public, in both public and environmental health. PEER and the public is interested in how what factors were considered, how thoroughly the agency evaluated the proposal, which stakeholders were consulted, and how the administrative response was developed.

### **Requests**

PEER requests the following records regarding the application by The Fertilizer Institute ("TFI") application:

1. Communications between or among the "Work Group" or "Team" that responded to the TFI application for approval to create a PG Roads Rule, including the Office of Air and Radiation (OAR) and the Office of Radiation and Indoor Air (ORIA) Radiation Regulation. That include one or more of the following terms:
    - "surface water"
    - "ground water"
    - "NEPA"
    - "endangered"
-

- “post closure”
- “abandonment”
- “sinkhole”
- “collapse”
- “dose distribution”
- “exposure duration”
- “public input”
- “public comment” or
- “stakeholder”

Any checklists, evaluations of risk assessments, plans, or other materials between members of the team or work group.

All meeting agendas and meeting minutes for meetings that took place that included representatives from TFI or representatives from the Mosaic Company.

All communications between TFI, the Mosaic Company and the EPA, including the office of Air and Radiation and the Office of Radiation and Indoor Air.<sup>1</sup>

All communications between elected public officials and EPA.

All communications between the OAR and ORIA and any of the regional EPA offices.

2. The contents of any SharePoint or other networked storage folders concerning the application for the use of phytogypsum in road construction

If the above requests are unclear, result in an abnormally large number of results, or otherwise impracticable please contact the requester to provide clarification or narrow the scope of the request accordingly.

Responsive records should exclude routine or automatically generated emails such as news alerts, roundups, or similar services.

PEER specifically requests that a search be conducted of the agency’s SharePoint, Google Drive, DropBox, or any similar system of file storage and management, as well as files stored locally on any relevant custodian’s hard drive or cloud-computing OneDrive system.

---

<sup>1</sup> To the extent that this request may involve trade secrets protected by exemption 4, please contact the requester to determine whether to narrow the scope of the request or conduct a CBI review for certain materials.

To protect individual employees, PEER does not seek the full names or other personally identifying information of employees named in responsive documents if it would unreasonably infringe upon their personal privacy.

## **Scope of Request**

### **1. Dates of Records**

This request is limited to records and information generated between July 1, 2019 and the date of this request.

### **2. Custodians**

- Anne Idsal, Principal Deputy Assistant Administrator;
- Jonathan Edwards, Director, Office of Radiation and Indoor Air;
- Lee Veal, Director, Radiation Protection Division; and
- the “Work Group” or “Team” that responded to the TFI application

### **3. Form of Records**

This request includes all final documents that have ever been within the agency’s custody or control, whether they exist in agency “working,” investigative, retired, electronic mail, or other files. All electronic records should be delivered in their original file format with original metadata and any attachments included. Physical records should be scanned or otherwise converted into electronic format.

Responsive records should include electronic messages (including email, texts, chats, and instant messaging via Google, iMessage, WhatsApp, Facebook, Slack, Microsoft Teams, Skype, and any similar services) stored on any desktop, laptop, tablet, server, commercial document sharing service (Microsoft Teams or OneDrive) or mobile device, as well as handwritten materials, if they have not been digitized. Please also provide all attachments or linked materials if they are in the agency’s possession or control. For electronic records, please provide all records in their native file formats (i.e. not converted to PDF) with all metadata included, and for records such as emails which have files embedded or attached, please provide all attachments in their native formats. For instant messages, plain text is acceptable consistent with guidance issued by the National Archives and Records Administration.

### **4. Withholdings and Exemptions**

For any documents or portions of documents that you block release due to specific exemption(s) from the requirements of the Freedom of Information Act, please provide an index itemizing and describing the documents or portions of documents withheld. The index should, pursuant to the holding of Vaughn v. Rosen (484 F.2d 820 [D.C. Cir.

1973] cert. denied, 415 U.S. 977 [1974]), provide a detailed justification for claiming a particular exemption that explains why each such exemption applies to the document or portion of a document withheld.

### **Fee Waiver Request**

PEER requests that all fees be waived because “disclosure of the information is in the public interest . . . and is not primarily in the commercial interest of the requestor” (5 U.S.C. § 552 (a) (4)(A)):

#### **1. The records concern the operations or activities of the Government.**

The FOIA request is, by its terms, limited to identifiable activities of the agency and the its capacity to approve the use of PG in public roads.

#### **2. The disclosure of the requested records is likely to contribute to public understanding of these operations or activities.**

The agency is making a decision that is a public health issue with foreseeable impacts to water quality, air quality and endangered species. If the public sees these materials, it will help enhance their understanding of how the EPA is considering allowing the use of radioactive backfill in public roads.

#### **3. The release of these requested records will contribute significantly to public understanding of the governmental activities.**

The nature of the information should inform the public about the operation, performance, and management of the EPA radiation program, public process and how science is considered in the process.

PEER intends to provide the requested information to members of Congress and its relevant committees, as well as members of state governments whose constituents may be affected by the construction of public roads with radioactive backfill. We also intend to disseminate it to the general public through —

- Release to the news media;
- Posting on the PEER web page which draws 5,000-7,000 unique visitors per month; and
- Publication in the PEER newsletter that has a circulation of approximately 20,000, including 1,500 journalists.

Through these methods, PEER generates an average of 1.5 mainstream news articles per day. Moreover, media coverage of the EPA approval and creation of a rule without public comment that allows the use of radioactive materials in public roads with impacts that were not fully considered by the agency underlines the broad public interest in this material.

#### **4. Disclosure would not serve a commercial interest of the requestor.**

Disclosure is in no way connected with any commercial interest of the requestors in that PEER is a nonprofit, nonpartisan public interest organization concerned with upholding the public trust through responsible management of our nation's resources and with supporting professional integrity within public land management and pollution control agencies. To that end, PEER is designated as a tax-exempt organization under section 501 (c)(3) of the Internal Revenue code.

#### **Please Request any Necessary Clarification or Narrowed Scope**

If in the process of conducting a search for records responsive to this request it appears that a large quantity of irrelevant material is being included or further relevant material may not be captured by the specific terms of the request, or any other concerns related to the timeliness or completeness of the response arise, please contact the undersigned at [email].

In the event an exceptionally voluminous or complex set of potentially responsive records requires review, please advise us of the need to make rolling productions and a schedule on which PEER's request can be fully answered.

If you have any questions about this FOIA request, please contact me by phone at (202) 265-7337 or by email. I look forward to receiving the agencies final response within 20 working days.

Thank You,



Kevin H. Bell  
Staff Counsel  
Public Employees for Environmental Responsibility  
[kbell@peer.org](mailto:kbell@peer.org)  
240-247-0298

cc:

Anne Idsal, Principal Deputy Assistant Administrator  
[idsal.anne@epa.gov](mailto:idsal.anne@epa.gov)

Jonathan Edwards, Director, Office of Radiation and Indoor Air  
[edwards.jonathan@epa.gov](mailto:edwards.jonathan@epa.gov)

Lee Veal, Director, Radiation Protection Division  
[veal.lee@epa.gov](mailto:veal.lee@epa.gov)